

The State of New Hampshire Insurance Department

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Roger A. Seigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

Bulletin

Docket No.: INS No. 18-020-AB

TO: All Property & Casualty Insurance Companies

FROM: Roger A. Seigny, Insurance Commissioner

A handwritten signature in black ink, appearing to be "RAS", is written over the "FROM:" line.

DATE: May 3, 2018

RE: After Market Parts Law, RSA 407-D

This bulletin provides guidance in regard to the proper interpretation of the After Market Parts Law, RSA 407-D. New Hampshire's general rule on statutory interpretation is that the words in a statute should be given their plain meaning to effectuate their underlying policies. *See Appeal of Northern New England Tele. Operations, LLC*, 165 N.H. 267, 271 (2013).

A. PLACED IN SERVICE STANDARD.

The After Market Parts Law provides that no insurer of private passenger automobiles shall require or specify the use of after market parts on vehicles that have been placed in service within the immediately preceding two (2) years and that have 30,000 or fewer miles recorded on the odometer. See RSA 407-D:3-a.

Some insurers have taken the position that "placed in service" means the date of manufacture. Such an interpretation of the phrase "placed in service" is inconsistent with the plain meaning of the phrase and the underlying consumer protection policy that the owner or lessee of a new vehicle should receive original manufacturer parts. Based upon plain meaning, the phrase "placed in service" is properly interpreted to mean the date of original purchase or lease by the original owner or lessee.

Any insurer interpreting the phrase "placed in service" more narrowly than that detailed above would be in violation of RSA 407-D and would, as such, be subject to the enforcement provisions provided by RSA 407-D:5.

B. LIKE KIND AND QUALITY STANDARD.

The After Market Parts Law provides that no insurer shall require the use of after market parts in the repair of an automobile unless the after market part is at least equal in like kind and quality to the original part in terms of fit, quality, and performance. RSA 407-D:3.

Some insurers have agreed that a part that they have required be used is not of like kind and quality to the original equipment manufacturer part but have, nevertheless, declined to pay the resulting additional costs associated with removing, returning, and replacing the non-compliant part with an RSA 407-D compliant part. Such a position by an insurer is inconsistent with RSA 407-D's underlying consumer protection policy and constitutes illegal pressure on New Hampshire consumers to accept non-like kind and quality parts. It is important to keep in mind that non-like kind and quality parts are illegal parts.

Any insurer refusing to pay the above detailed costs consistent with New Hampshire insurance law would be in violation of RSA 407-D and would, as such, be subject to the enforcement provisions provided by RSA 407-D:5.

C. DISCLOSURE STANDARD.

The After Market Parts Law's disclosure provision, RSA 407-D:4, I, provides the insurer shall disclose to the claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print than 10 point type:

This estimate has been prepared based on the use of automobile parts not made by the original manufacturer. Parts used in the repair of your vehicle by other than the original manufacturer are required to be at least equal in like kind and quality in terms of fit, quality, and performance to the original manufacturer parts they are replacing.

The disclosure provision further provides that "any insurer who fails to provide the precise statement in paragraph I shall be prohibited from requesting or requiring the use of after market parts."

In view of the foregoing, RSA 407-D requires the insurer to provide, prior to the commencement of the repair at issue as part of the estimate documents, an exact quote of the disclosure statement on the estimate or attached to the estimate in order to request or require the use of after market parts. Failure to meet this standard bars insurers from requesting or requiring the use of after market parts.

Any insurer requesting or requiring the use of after market parts without an RSA 407-D compliant disclosure would be in violation of RSA 407-D and would, as such, be subject to the enforcement provisions provided by RSA 407-D:5.